

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Telmex International, Inc.:) File No. FCN-NEW-20000114-00001
Notification of Foreign Affiliation)
Pursuant to 47 C.F.R. Section 63.11(a))

ORDER ON RECONSIDERATION

Adopted: August 2, 2001

Released: August 3, 2001

By the Chief, International Bureau:

I. INTRODUCTION

1. In an Order last year the International Bureau (Bureau) reclassified Telmex International, Inc. (Telmex USA) as a dominant carrier on the U.S.-Guatemala route because of its affiliation with Telecomunicaciones de Guatemala, S.A. (Telgua), and made Telmex USA subject to the Commission's international dominant carrier regulations for service on the U.S.-Guatemala route. International Telecommunications Inc. (ITI) filed a petition for reconsideration of the Telmex/Telgua Order, requesting that the Commission impose additional safeguards as a condition for approval of Telmex USA's affiliation with Telgua. For the reasons discussed below, we deny ITI's petition for reconsideration.

II. BACKGROUND

2. On January 14, 2000, Telmex USA informed the Commission, pursuant to section 63.11(a) of the Commission's rules, of Telmex's proposed controlling investment in Telgua. In the notification, Telmex USA requested that it continue to be regulated as non-

1 Telmex International, Inc.: Notification of Foreign Affiliation Pursuant to 47 C.F.R. Section 63.11(a), File No. FCN-NEW-20000114-00001, Order, 15 FCC Rcd 4490 (IB 2000) (Telmex/Telgua Order).

2 International Telecommunications Inc. Petition for Reconsideration, File No. FCN-NEW-20000114-00001, filed Mar. 29, 2000 (ITI Petition). ITI is an international carrier based in Florida that provides services on the U.S.-Guatemala route through its affiliate and agent, Generado Electrica del Oriente, S.A. (GEDO). Id. at 1, 3.

3 47 C.F.R. § 63.11(a).

4 See Telmex/Telgua Order, 15 FCC Rcd at 4490 ¶ 2.

dominant on the U.S.-Guatemala route.⁵ Five parties, including ITI, filed comments on the Telmex notification.⁶ In the *Telmex/Telgua Order*, the Bureau considered the arguments of alleged anticompetitive practices occurring on the U.S.-Guatemala route raised by the commenters along with the representation of Telmex USA in response to these allegations that it would not object to being classified as dominant on the U.S.-Guatemala route, and therefore imposed dominant carrier regulation pursuant to sections 63.10 and 63.11(e)(1) of the Commission's rules⁷ on Telmex USA for its provision of service on the U.S.-Guatemala route.⁸

3. ITI filed a petition requesting that we reconsider our decision in the *Telmex/Telgua Order* and impose additional safeguards on the provision of service by Telmex USA on the U.S.-Guatemala route. Specifically, ITI states that because of the affiliation between Telmex USA and Telgua, the Commission should condition Telmex USA's authorization to provide service on the U.S.-Guatemala route on: "(1) a commitment to refrain from fraudulent or criminal conduct on either end of the U.S.-Guatemala route, [and] (2) a commitment to cease adjudicated, anti-competitive conduct that prevents competitors from terminating traffic on the foreign end of the route."⁹ ITI bases its petition on allegations of anti-competitive conduct by Telgua in Guatemala, and on charges of criminal fraud and criminal contempt of court brought against Telmex-appointed executives of Telgua by a Guatemalan prosecutor, which occurred after the release of the *Telmex/Telgua Order*.¹⁰ Telmex USA filed an opposition to the petition,¹¹ and ITI replied to the opposition.¹²

⁵ *Id.* at 4491 ¶ 2.

⁶ *See id.* at 4492 n. 13.

⁷ 47 C.F.R. §§ 63.10, 63.11(e)(1).

⁸ *Telmex/Telgua Order*, 15 FCC Rcd at 4491-92 ¶ 4-5.

⁹ ITI Petition at 8. In its reply comments ITI limited its request to imposing a condition that Telmex USA "refrain[] from engaging in *adjudicated criminal* conduct injuring competition and raising prices paid by U.S. consumers." ITI reply comments at 1 (emphasis in original).

¹⁰ ITI Petition at 2-4.

¹¹ Telmex International, Inc., Opposition to Petition for Reconsideration, File No. FCN-NEW-20000114-00001, filed Apr. 10, 2000.

¹² International Telecommunications Inc. Reply Comments in Support of Petition for Reconsideration, File No. FCN-NEW-20000114-00001, filed Apr. 17, 2000.

III. DISCUSSION

4. We find that ITI has not provided any basis for us to alter our decision in the *Telmex/Telgua Order* to impose dominant carrier safeguards on Telmex USA on the U.S.-Guatemala route. In its petition ITI merely restates the arguments it made in its comments on the Telmex USA notification and that we considered in adopting the *Telmex/Telgua Order*. Although ITI provides updated information regarding activities in Guatemala, this information does not alter the underlying argument that ITI made regarding the Telmex USA notification. The new information provided by ITI in its petition merely demonstrates the continuation of the on-going legal and regulatory proceedings in Guatemala. We considered the pending allegations of anticompetitive practices on the U.S.-Guatemala route in deciding to impose dominant carrier regulation on Telmex USA for that route initially.¹³ We do not find that the additional information in the petition provides a basis for reconsidering our decision in the *Telmex/Telgua Order* to reclassify Telmex USA as a dominant carrier on the U.S.-Guatemala route and make it subject to dominant carrier regulations for that route.

5. Further, ITI has not shown that the dominant carrier safeguards imposed on Telmex USA on the U.S.-Guatemala route are insufficient to protect U.S. consumers. In the *Foreign Participation Order* the Commission found that these safeguards are "sufficient to enable the Commission to detect and deter a foreign carrier from using its market power on the foreign end to benefit its affiliated U.S. carrier. . ."¹⁴ We find that ITI has not demonstrated in this case that the dominant carrier regulations are not sufficient to protect against potential harm to the U.S. international telecommunications market and U.S. consumers. Moreover, ITI has not demonstrated that the additional safeguards it requests would further assist the Commission in detecting and deterring such anticompetitive conduct. Consequently, we find no basis to impose the additional safeguards requested by ITI.

¹³ *Telmex/Telgua Order*, 15 FCC Rcd at 4491-92 ¶¶ 4-5. As explained in that Order, a U.S. carrier is presumptively classified as non-dominant on an affiliated route if, as is the case here, the carrier solely provides service through the resale of an unaffiliated U.S. facilities-based carrier's international switched services on the affiliated route. In this case we found concerns unique to this situation that overcame that presumption, and consequently classified Telmex USA as dominant on the U.S.-Guatemala route. *Id.*

¹⁴ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23995 ¶ 227 (1997) *recon.* 15 FCC Rcd 18158 (2000).

IV. ORDERING CLAUSE

6. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Act, 47 U.S.C. §154(i), and Section 1.106 of the Commission's rules, 47 C.F.R. §1.106, that the petition for reconsideration filed by International Telecommunications Inc. IS DENIED. This Order is issued under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon release.

FEDERAL COMMUNICATIONS
COMMISSION

Donald Abelson
Chief, International Bureau